



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201447051

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 28 2014

Uniform Issue List: 402.00-00

T:EP:RA:T3

Legend:

Taxpayer A = ***

Annuity B = ***

Amount A = ***

Court C = ***

State S = ***

Conservator B = ***

Conservator C = ***

Dear ***:

This is in response to the request that you submitted on behalf of Taxpayer A as Taxpayer A's authorized conservator dated February 14, 2014, as supplemented by correspondence dated May 27, 2014, and June 20, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The authorized representative has submitted the following facts and representations under penalty of perjury in support of the ruling requested.

Conservator C represents that Conservator B took a distribution from Annuity B totaling Amount A. Conservator C asserts that the failure to accomplish a

rollover within the 60-day period prescribed by section 402(c)(3) was due to Conservator B's unauthorized withdrawals from Taxpayer A's Annuity B which Conservator B did not reimburse during the 60-day period. Conservator C further represents that Amount A has not been used for any other purpose.

Taxpayer A is the holder of Annuity B. Taxpayer A suffers from dementia and is unable to handle his own affairs. He has been in a full care facility for several years. On November 17, 2011, Conservator B was appointed by Court C, a court of competent authority in State S, as conservator of Taxpayer A's affairs. Thereafter, Conservator B began to move Taxpayer A's assets into his own personal accounts. Conservator B misappropriated Amount A from Annuity B.

Through a pretrial settlement, Conservator B reimbursed Amount A; Amount A is being held by the court. On March 6th, 2013, Conservator C was appointed as conservator of Taxpayer A's affairs.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement in section 402(c)(3) of the Code with respect to the distribution of Amount A.

Section 403(b)(8)(A) of the Code provides that if any portion of the balance to the credit of an employee in a section 403(b) annuity contract is paid to the employee in an eligible rollover distribution, and the employee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 403(b)(8)(B) of the Code provides that the rules of section 402(c)(2) through (7), (9) and (11) shall apply for the purposes of section 403(b)(8)(A).

Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted is consistent with your assertion that the failure to accomplish a timely rollover was due to Conservator B's misappropriation of funds from Taxpayer A's Annuity B.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from Annuity B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A into a Rollover IRA. Provided all other applicable requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling assumes Annuity B satisfies the qualification requirements of Section 403(b) of the Code at all times relevant to this transaction.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact **** (ID# ***) at (***) ***-***. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter

Notice of Intention to Disclose

CC: ***
